

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**ST. CATHERINE HEALTHCARE AND  
REHABILITATION CENTER, LLC**

**and**

**DISTRICT 1199NM, NATIONAL UNION OF  
HOSPITAL AND HEALTHCARE EMPLOYEES,  
AFSCME, AFL-CIO**

**Cases 28-CA-22668  
28-CA-22761  
28-CA-22890**

**ORDER**

On May 11, 2010, Administrative Law Judge William G. Kocol, over the objections of the General Counsel, issued an on-the-record oral ruling accepting a non-Board settlement of the above unfair labor practice cases, approving the Union's request to withdraw the charges in the above-captioned cases, and dismissing the Second Consolidated Complaint. Thereafter, the General Counsel file a timely request for special permission to appeal the judge's rulings,<sup>1</sup> the Union and the Respondent each filed opposition briefs, and the General Counsel filed a reply brief.

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<sup>1</sup> We find no merit to the Respondent's contention that the General Counsel's request for special permission to appeal the judge's ruling should be rejected as untimely filed. Sec. 102.26 of the Board's Rules and Regulations does not specify an exact time frame for filing a special appeal other than to say it should be filed "promptly." The General Counsel filed his request 15 days after receiving the transcript of the hearing and exhibits. There is no indication, nor has the Respondent claimed, that it has suffered any prejudice as a result of the timing of the General Counsel's request. In the absence of any showing of prejudice, we regard the request as having been filed within the requirements of the Rule. See generally, *Excel DPM of Arkansas, Inc.*, 324 NLRB 880 n.1 (1997) (rejecting respondent's argument that General Counsel's motion for summary judgment should be rejected as untimely because it was not filed "promptly" within the meaning of Sec. 102.24(b) of the Board's Rules and Regulations, where respondent did not show that it suffered prejudice due to the lapse of 5 months between General Counsel's receipt of answer to the complaint and the filing of the motion).

The General Counsel's request for special permission to appeal the judges' ruling is granted. After careful consideration of the merits, we find that, on balance, the non-Board settlement satisfies the standards set forth in *Independent Stave Co.*, 287 NLRB 740, 743 (1987).<sup>2</sup> Therefore, the judge did not err in approving the settlement and his rulings are affirmed.

We therefore affirm the judge's ruling approving the settlement agreement and remand the proceeding to the Regional Director for further appropriate action.<sup>3</sup>

Dated, Washington, D.C., August 10, 2010.

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Wilma B. Liebman, Chairman

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Peter C. Schaumber, Member

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Craig Becker, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

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<sup>2</sup> The General Counsel maintains that the settlement is unreasonable because it does not provide a remedy for the alleged Sec. 8(a)(1) violations. The General Counsel contends that the absence of a notice-posting remedy for these violations, coupled with the settlement's broad confidentiality restrictions, denies the unit employees remedial relief for the harm they suffered from the Respondent's alleged unlawful conduct. We find that the settlement's provision for the Union's immediate certification as representative of the unit employees, the commencement of bargaining for an initial collective-bargaining agreement, and the Union's on-going presence in the unit will effectively ensure the protection of employees' Section 7 rights and ameliorate any lingering coercive effects of the alleged unfair labor practices.

<sup>3</sup> Despite the absence of an enforcement mechanism in the settlement, should there be a breach of the agreement or allegations of post-settlement violations of the Act, it remains within the Board's power not only to consider any new allegations, but also to reinstate the charges and complaint which are the subjects of this settlement. See, e.g., *NLRB v. Arrow Specialties, Inc.* 437 F.2d 522 (8<sup>th</sup> Cir. 1971); *NLRB v. Southeastern Stages, Inc.*, 423 F.2d 78 (5<sup>th</sup> Cir. 1970). This principle applies not only to settlements in which the Board is a party but equally to non-Board settlements. *American Postal Workers Union, Local 735*, 340 NLRB 1363, 1364 (2003); *Milk Marketing Inc.*, 292 NLRB 47 (1988); *Norris Concrete Materials, Inc.*, 282 NLRB 289 (1986).